

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT REUTHER,

Plaintiff,

VS.

**LONNIE CHAPMAN,
et al.,**

Defendants.

CIVIL ACTION NO. 07-CV-12249-DT

DISTRICT JUDGE GERALD E. ROSEN

MAGISTRATE JUDGE MONA K. MAJZOUB

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OPINION AND ORDER DENYING PLAINTIFF'S MOTIONS

This is a civil rights action filed by a Michigan state prisoner. Plaintiff filed an Application to Proceed Without Prepayment of Fees on June 28, 2007. (Docket no. 8). He also filed a Motion for Discovery on August 13, 2007. (Docket no. 10). No Defendant has filed an Answer or otherwise made an appearance in the case. Therefore there are no responses to these motions. All pretrial matters have been referred to the undersigned for decision. (Docket no. 5). These matters are now ready for ruling.

1. Plaintiff's Application to Proceed Without Prepayment of Fees

On June 7, 2007 Magistrate Judge Whalen granted Plaintiff's Application to Proceed Without Prepayment of Fees. (Docket no. 3). That Order has not been withdrawn. Therefore, Plaintiff's present Application to Proceed Without Prepayment of Fees is moot. Since that earlier Order, Plaintiff has paid the \$350 filing fee. Also, he has filed certificates of service for all of the Defendants that he has identified to date. No Defendants have yet filed an Answer or otherwise responded to this service. However, only a few days have passed since Plaintiff alleges that he effected service, and the time for responding has not yet expired. Accordingly, the Court at this point sees no need to grant Plaintiff's Application to Proceed Without Prepayment of Fees. The Court is not convinced that Plaintiff's attempts at service will ultimately prove successful. However, at this stage ordering the U.S. Marshal

to attempt service is not warranted because it is not clear that the Defendants will not respond to the attempt Plaintiff has made. Therefore, the Court will deny Plaintiff's Application but not foreclose the possibility of his seeking service of process by the Marshal if his present attempts at service prove to be unsuccessful.

2. *Plaintiff's Motion for Discovery*

Plaintiff filed a Motion for Discovery in which he seeks to discover the full names of the John and Jane Doe Defendants. This Motion is premature. As stated above, the Defendants, and particularly the Sheriff who would have the information that Plaintiff is seeking, have not yet filed any pleading showing that they have been properly served. Discovery should be undertaken among the parties without court intervention. If the parties reach an impasse the Court may become involved, however Plaintiff is prematurely seeking intervention by the Court. He should first allow the Defendants to make an appearance and then attempt to discover the information he seeks without court intervention. Accordingly, Plaintiff's Motion for Discovery will be denied without prejudice.

IT IS THEREFORE ORDERED that Plaintiff's Application to Proceed Without Prepayment of Fees (docket no. 8) is **DENIED** as moot.

IT IS FURTHER ORDERED that Plaintiff's Motion for Discovery (docket no. 10) is **DENIED** without prejudice.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: August 30, 2007

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this order was served upon Robert Reuther and Counsel of Record on this date.

Dated: August 30, 2007

s/ Lisa C. Bartlett
Courtroom Deputy